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Supreme Court of the United States

October Term, 1960

No. 636

PEOPLE OF THE STATE OF NEW YORK,

Respondent,

against

LOUIS VON CSEH,

Defendant-Petitioner.

RESPONDENT'S BRIEF AND APPENDIX IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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This is a petition for a writ of certiorari to the New York State Court of Appeals to review an order of that Court, entered July 8, 1960 [8 N. Y. (2d) 993], unanimously affirming, without opinion, an order of the Appellate Division of the Supreme Court, First Department, entered December 16, 1959 [9 App. Div. (2d) 660], which modified and affirmed a judgment of the Court of General Sessions, New York County, convicting the defendant-petitioner on August 20, 1957, after trial, of GRAND LARCENY and FORGERY

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and sentencing him to a number of concurrent terms of imprisonment of from two to four years each.

Although the defendant-petitioner was originally convicted of twenty-five counts of grand larceny in the first degree (N. Y. Penal Law, 1294) and four counts of forgery in the second degree [N. Y. Penal Law, 887], the judgment was modified by the Appellate Division, and affirmed by the Court of Appeals, to reverse and dismiss all counts of larceny and affirm the judgment upon the remaining counts of forgery. The basis of such modification was solely the technical failure in the pleadings to allege, pursuant to the requirements of Section 1280-a of the New York Penal Law, that the larcenies involved the use of false or fraudulent representations and pretenses [see opinion 9 App. Div. (2d) 660]. Inasmuch as the sentences imposed on these counts were to run concurrently with sentences imposed on the forgery counts, judgment was affirmed on the forgery convictions.

The remittitur was filed in the Court of General Sessions on August 17, 1960, and the defendant-petitioner therewith commenced the service of the sentence upon which he is presently confined. A motion by the defendant-petitioner for reargument was denied by the Court of Appeals on October 13, 1960. On the same date, the remittitur was amended by the Court of Appeals to show that "there was presented and necessarily passed upon" an "alleged question under the Constitution of the United States", to wit: was the defendant-petitioner denied his constitutional right to a speedy trial. "The Court of Appeals held that there was no such denial and that there was no substance of merit to defendant's contentions" [see Appendix A, pp. 15-16, *infra*].

A motion made to this Court on November 10, 1960, for admission to bail pending a decision on the instant petition (not then filed) was denied without prejudice on November 19, 1960, by Mr. Justice Harlan.

Pertinent New York Statutes

Code of Criminal Procedure, Section 8:

Rights of defendant in a criminal action.

In a criminal action the defendant is entitled

1. To a speedy and public trial

* * *

Code of Criminal Procedure, Section 668:

When a person indicted is not brought to trial at the next term thereafter.

If a defendant, indicted for a crime whose trial has not been postponed upon his application, be not brought to trial at the next term of the court in which the indictment is triable, after it is found the court may, on application of the defendant, order the indictment to be dismissed, unless good cause to the contrary be shown.

Civil Rights Law, Article 2, Section 12:

Rights of persons accused of crime

In all criminal prosecutions, the accused has a right to a speedy and public trial, by an impartial jury, and is entitled to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; and to have compulsory process for obtaining witnesses in his favor. An alien is not entitled to a jury, composed in part of aliens or strangers, in an action or special proceeding civil or criminal.

Introduction

The instant petition seeks to raise for review the sole federal question of whether the time which lapsed between the filing of the indictment and the commencement of trial thereon amounted to a deprivation of the defendant-petitioner's constitutional right to due process of law under the Fourteenth Amendment of the United States Constitution.

For present purposes, an extended or detailed review of the evidence adduced on trial, which proved beyond a reasonable doubt the defendant-petitioner's guilt of the crimes of grand larceny and forgery, is unwarranted. The only pertinency of such an evidentiary recapitulation, or an analysis thereof, would be to demonstrate that the issues below involved complex commercial transactions, necessitating the presence of certain foreign witnesses, and the trial could have been reasonably expected to be a rather lengthy one. In this connection, suffice it to say that the evidence established that the defendant-petitioner, an officer and agent of an Indian corporation, swindled his principal out of nearly a quarter of a million dollars by embezzling monies accumulated as a surplus fund by an independent domestic corporation which was acting as purchasing agent for the Indian principal. The foreign corporate principal had contracted with the Indian states of Jaipur and East Punjab for the installation of hydroelectric facilities and, through the agency of the defendant-petitioner, selected an apparently responsible local firm to act as purchasing agent in the United States. Letters of credit in favor of the purchasing corporation were opened by the Indian corporation with a New York bank totalling nearly one and a quarter million dollars. On instructions from the Indian principal and with the connivance of various suppliers, the purchasing agent presented for payment artificially inflated invoices which were

paid at their face amounts by the bank. The difference between those amounts and the actual cost of the equipment purchased was accumulated by the purchasing agent to the credit of their principal. By arrangement, these funds were released to the defendant-petitioner in his capacity as agent, were deposited by him in his personal account, and were subsequently withdrawn and converted to his own use. Having thus converted funds of his principal, the defendant-petitioner sought to conceal his larceny by crudely forging and uttering a paper purporting to show that he had transferred $185,250 to a courier who was subsequently killed in a plane crash.

Chronology of Events During Time Elapsed Between Indictment and Commencement of Trial

Much of the following data was not part of the record originally before the New York Court of Appeals. It is drawn, however, from the records of the Court of General Sessions and the District Attorney's Office, consisting of daily calendars, regular docket entries, and stenographic transcripts. The latter are reproduced herein in the appendix. These records are deemed relevant and are therefore included for the guidance of the Court.

The indictment against the defendant-petitioner was filed on October 15, 1953. On October 19, 1953, the defendant-petitioner was arraigned thereon and entered a plea of not guilty. The case next appeared on the trial calendar in Part 5 of the Court of General Sessions on October 22, 1953. The daily calendar kept by the clerk indicates that the case was marked "ready and passed" and adjourned to the following day. On October 23, 1953 in Part 5, the People announced they were ready for trial. After apprising the court of the complex nature of the case and their busy schedule, defense counsel stated that they did

not see how "anything could be done" on the case until "after the first of the year" (minutes, Appendix D, pp. 30-46; see p. 55, *infra*). It was agreed to adjourn the case until November 13, 1953, although counsel for the defendant-petitioner made it clear that he would not be ready to proceed to trial on that day (*Ibid.*).

On November 9, 10, and 12, 1953, the People's principal witness was examined conditionally in order to perpetuate his testimony in anticipation of his impending return to India. On November 13, 1953, in Part 5, this fact was reported to the court and the matter was adjourned to November 30, 1953, without objection by the defendant-petitioner (see minutes, Appendix D, pp. 47-48, *infra*). On November 17, 1953, the conditional examination of the witness was discontinued and voided on motion of the District Attorney and by consent of the defendant-petitioner.

On November 18, 1953, a motion by the defendant-petitioner for a bill of particulars was granted.

On November 30, the case once more appeared on the Part 5 calendar. The District Attorney informed the court that two of the People's witnesses had returned to India "in view of the fact that an early trial was out of the question" [see minutes, Appendix D, pp. 49-50, *infra*]. The People requested that the case be marked off the calendar and counsel for the defendant-petitioner stated on the record that he had no objection (*Ibid.*).

On April 20, 1954, the defendant-petitioner filed another motion addressed to the indictment, *viz.*: a motion to inspect the Grand Jury minutes for alleged insufficiency of evidence to support the indictment. That motion was denied on May 4, 1954.

The case next appeared on the calendar in Part 9, General Sessions, on January 7, 1955, and was adjourned

until April 18, 1955. The stenographer's minutes do not show any statement concerning the purpose of this adjournment, who requested it, or any objection by the defendant-petitioner. On April 18, 1955, the case was marked off the calendar without protest, no appearance having been made by the defendant-petitioner (see minutes, Appendix D, p. 51, *infra*).

The matter next appeared on the Part 2 calendar on September 13, 1955, for the purpose of fixing a date for trial. It was then adjourned to November 1 at the suggestion of counsel for the defendant-petitioner who stated he would not be ready for trial before that date (see minutes, Appendix D, pp. 52-54, *infra*). For reasons unknown, however, the matter did not appear on the calendar on November 1, 1955, and on October 15, 1956, the defendant-petitioner moved to dismiss the indictment for lack of prosecution. That motion was denied on December 2, 1956 with leave to renew after April 10, 1957 (see opinion of McCullen, J., Appendix C, pp. 21-23, *infra*).

On February 4, 1957, the case was placed on the calendar of Part 5, General Sessions. On that date, the defendant-petitioner announced for the first time that he was ready for trial. At the request of the People, and owing to the fact that certain witnesses were then in India, the case was adjourned until March 11 (see minutes, Appendix D, pp. 55-56, *infra*).

On March 11, 1957, the matter was again adjourned, over the protest of the defendant-petitioner, on the grounds that one of the People's witnesses was ill in India (minutes, Appendix D, pp. 57-60, *infra*). The trial date was set for May 7, 1957.

Trial commenced on May 22, 1957.

In sum, the defendant-petitioner was indicted on October 15, 1953, and pleaded not guilty on October 19, 1953. Thereafter, the case appeared on the trial calendar seven times before the defendant-petitioner moved on October 15, 1956, to dismiss for lack of prosecution. On not one of those seven occasions did the defendant-petitioner express any objection to adjournment. In fact, on two occasions, October 23, 1953, and September 13, 1955, the adjournment was at the express request or suggestion of the defendant-petitioner who stated that he was not ready for trial. It was only after the motion to dismiss was denied that further adjournments were protested. In addition the defendant-petitioner made two pre-trial motions: one, on November 18, 1953, for a bill of particulars, the second on April 20, 1954, to inspect the Grand Jury minutes.

Question Presented

Was the defendant-petitioner deprived of due process of law by reason of the length of time which elapsed between his indictment and the commencement of the trial thereon?

POINT I

There was no denial of due process of law in the speed with which the defendant-petitioner was brought to trial.

Inasmuch as this Court has not held that the speedy trial mandate of the Sixth Amendment of the United States Constitution is applicable to state prosecutions, the issue herein is simply whether the lapse of time between the indictment and the commencement of the defendant-petitioner's trial was so extensive, arbitrary and prejudicial as to have deprived him of due process within the meaning of the Fourteenth Amendment. Yet, it is abundantly evident that the right to a speedy trial was in no manner abrogated in the instant case whether the traditional right be viewed in the broad perspective of due process or measured by the standards of the Sixth Amendment itself. Indeed, the facts and circumstances have already been held up to the test of the New York rule and, after close examination by the Court of Appeals, no offense to the state mandate has been discovered (see remittitur, as amended, Appendix A, pp. 15-16, *infra*).

Clearly, the determination of whether the defendant-petitioner lost his right to a speedy trial does not hinge solely upon the bare numerical count of the forty-three months which passed before his case was brought to trial. Inquiry must be made into the nature of the particular case, the reasons for the postponements of the trial, and above all, into the attitude of the defendant-petitioner himself during the rather extended pendency of the charges upon which he was ultimately tried.

The indictment charged a series of larcenies and attendant forgeries arising out of a complex commercial situation involving financial arrangements and transactions

between parties, individual and corporate, both in this country and abroad. The testimony of witnesses from India was required and able and experienced counsel for the defendant-petitioner himself stated on the record that the proper conduct of the defense required lengthy and involved preparation (see affidavit, Appendix B, at p. 18, *infra*). It was, in fact, for the purpose of allowing counsel an adequate opportunity to prepare for trial that a number of the early adjournments were had. It will be recalled that the prosecution was ready shortly after the defendant-petitioner was arraigned, and attempted to bring the case to trial before an essential witness departed for his native land on the other side of the globe. When it became clear that the defendant-petitioner would not be prepared for an early trial, efforts were made to perpetuate the testimony of this essential witness. Unfortunately, this anticipatory proceeding had to be abandoned and was voided by mutual consent.

Thereafter, the *bona fide* efforts of the prosecution to bring the case to trial were stymied by the absence of the Indian witness. This insurmountable obstacle to an immediate trial, a factor well known to the defendant-petitioner when he secured the adjournment in the early stages, was repeatedly acknowledged by the trial court (see opinion, Appendix C, pp. 21-23, *infra*) as well as defense counsel (see affidavit, Appendix B, pp. 17-20, at p. 18, *infra*). The defendant-petitioner apparently utilized the intervening time to ready his case. His motion to inspect the Grand Jury minutes was not filed until April 20, 1954. In addition, it is fair to infer from counsel's statement on the record that he too was awaiting a witness or witnesses from India or at least was undertaking procedures to obtain records or testimony from India (see Appendix D, at p. 34, *infra*).

In any event, it is clear from the record that the defendant-petitioner not only failed to protest or object to

adjournments, but actually requested, suggested, and consented to postponements up to the time that he filed his motion to dismiss the indictment for lack of prosecution. That motion was filed on October 15, 1956, after 36 months or about six-sevenths of the total period had elapsed. The decision of the Court of General Sessions disposing of the motion expressed the Court's belief that, under the unusual circumstances of the instant case, the reasonable period of delay extended to April 10, 1957 (see opinion, Appendix C, pp. 21-23, *infra*). The defendant-petitioner himself concedes that this finding is the "law of the case" (brief, p. 16). The trial was actually begun within six weeks of that date, a period which could hardly be deemed an unreasonable delay in view of all that had gone before.

Wholly apart from the justification for the delay by virtue of the impossibility of securing the presence in the jurisdiction or perpetuating the testimony of an essential witness, and ignoring the plain fact that a substantial portion of the time elapsed was required by the defendant-petitioner for the preparation of his defense, the time lag in the instant case constituted neither an unreasonable nor unconstitutional deprivation of the right to a speedy trial. This right, whether asserted under state law, the due process clause, or even the Sixth Amendment itself, is deemed to be a personal one and may be waived by the action or inaction of the accused whom it is designed to protect. In the instant case the picture of waiver is complete.

At this point it is our unpleasant task to note several grave and material misstatements of fact in the defendant-petitioner's brief to this Court. On pages 8 and 9 of that brief, counsel states that "the defendant, *once* sought a reasonable delay in the prosecution of the trial" (italics hers). On page 10, counsel states that each of the repeated adjournments after September 22, 1953, was "vigorously" protested. Again on page 15, the "real question" is

phrased in terms of the effect of a single request for adjournment by the defendant-petitioner. Indeed, the entire argument of the defendant-petitioner seems to be predicated upon this misapprehension of the facts (see brief 16). As has been previously noted, the record simply is not in accord with the defendant-petitioner's representation of it. Actually, the defendant-petitioner requested, joined in, or failed to protest each and every adjournment up to his motion to dismiss, never announcing his readiness to proceed until February 4, 1957, after more than thirty-nine of the total of forty three months had passed. Thus, on grounds of waiver alone, the present position of the defendant-petitioner is fatally unsound.

As the defendant-petitioner has forthrightly acknowledged, "[t]here is no dissent from the proposition that one may waive his constitutional or statutory right to a speedy trial, the right being a personal privilege and not of a jurisdictional nature, and not constituting any limitation upon the power of the state to prosecute" (brief, p. 21). Conveniently, counsel has listed authorities for this universal rule in sixteen American jurisdictions, including the federal (brief, pp. 21-23). Similarly, in the succeeding pages of her brief, counsel has restated corollary precepts, with voluminous citations, to the effect that requests for adjournments, failure to protest postponements, and even the filing of motions addressed to the indictment have all been regarded as waivers by the accused of his right to be brought speedily to trial (see brief, pp. 23-31, 34-38, *passim*). Indeed, the concept of waiver, inferred from conduct such as the defendant-petitioner exhibited in the instant case, is so universally established that a recapitulation of the authorities herein would be pointless and tiresome, particularly in view of the ample review afforded by the defendant-petitioner himself.

In view of the frank and explicit concession that the rules of the states and federal jurisdictions are uniform and clear concerning the issues of the instant petition, it is somewhat puzzling to find at the conclusion of the defendant-petitioner's brief, the prayer for the granting of certiorari based upon the assertion that there is a conflict of authorities (see brief, p. 47). While it is true that the circumstances of each individual case must be examined and the results perforce vary with the circumstances, yet the standards by which the facts are weighed reflect a singular accord among the reviewing authorities.

In the instant case, some of the operable factors are: the good cause for the delay; the diligent efforts of the prosecution to bring the case promptly to trial, or, in the alternative, to perpetuate certain essential testimony; the clear indication that the accused required a substantial period of time to prepare for trial; and the unmistakable consent and acquiescence by him to adjournments covering six-sevenths of the total elapsed time. In addition, there is the "law of the case" embodied in the decision of the trial court that the reasonable period of delay extended up to six weeks before the trial was actually commenced—that six weeks being clearly *de minimus* weighed against the forty odd months that went before. All of these factors are wholly inconsistent with the present claim of the defendant-petitioner that he was deprived of his right to a speedy trial. Moreover, as has been convincingly demonstrated in the defendant-petitioner's own brief, these factors would nullify his claim regardless of the jurisdiction or constitutional amendment under which it was asserted. Clearly, no violation of due process was incurred. Indeed, even if the explicit mandate of the Sixth Amendment itself were applied, no more convincing showing of good cause, coupled with waiver, would be required [see, e.g., *United States* v. *Kaye* (U.S.C.A. 1958) 251 Fed. (2d) 87, cert. den. 356 U. S. 919; see also, *Worthington* v. *United States*

(C.C.A. 7th 1924) 1 Fed. (2d) 154, cert. den. 266 U. S. 626, 45 S. Ct. 125, 69 L. Ed. 475; *Collins* v. *United States* (C.C.A. 9th 1946) 157 Fed. (2d) 409; *Pietch* v. *United States* (C.C.A. 10th 1940) 110 Fed. (2d) 817, 129 A. L. R. 563, cert. den. 310 U. S. 648, 60 S. Ct. 1100, 84 L. Ed. 1414; *United States* v. *Stein*, (D. C. S. D. N. Y.) 18 F. R. D. 17; *United States* v. *Provoo* (D. C. Md.) 17 F. R. D. 183, 198.

Conclusion

The petition for a writ of certiorari should be denied.

Respectfully submitted,

FRANK S. HOGAN
District Attorney
New York County.

RICHARD G. DENZER
H. RICHARD UVILLER
Assistant District Attorneys
Of Counsel

February, 1961

APPENDIX A

Order Amending Remittitur

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Thirteenth day of October A. D. 1960.

Present:

Hon. Charles S. Desmond, *Chief Judge*, presiding.

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent-Appellant,

v.

LOUIS VON OSEH,
Appellant-Respondent.

A motion to amend the remittitur in the above cause having been heretofore made upon the part of the defendant herein and papers having been submitted thereon and due deliberation having been thereupon had:

Ordered, that the said motion be and the same hereby is granted. Return of the remittitur requested and, when returned, it will be amended by adding thereto the following:

Appendix A

"Upon the appeal herein there was presented and necessarily passed upon an alleged question under the Constitution of the United States, viz: Defendant contended that the right to a speedy trial as guaranteed by the Constitution of the United States was denied to him. The Court of Appeals held that there was no such denial and that there was no substance or merit to defendant's contentions."

And the Court of General Sessions, County of New York, is hereby requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

GEARON KIMBALL
Deputy Clerk

APPENDIX B

Affidavit of Harris B. Steinberg, Read in Support of Motion to Dismiss Indictment

Indictment No. 3115—1953

COURT OF GENERAL SESSIONS

of the County of New York

PEOPLE OF THE STATE OF NEW YORK,

against

LOUIS VON OSEH,

Defendant.

State of New York,
County of New York, } ss.:

HARRIS B. STEINBERG, being duly sworn, deposes and says that he is the attorney for the above-named defendant and makes this affidavit in support of a motion to dismiss the action herein upon the ground that there has been undue delay in prosecuting the same, in that, without his fault, the defendant has not been brought to trial on the indictment herein, even though more than three years have elapsed since the defendant's arraignment under said indictment.

Appendix B

The indictment herein was found by the grand jury on October 15, 1953, and the defendant was arraigned on October 19, 1953, when he pleaded not guilty and was admitted to bail in the sum of $15,000.

A necessary and important witness on behalf of the prosecution is a citizen and resident of India and, understandably, this poses a problem for the District Attorney in that it is difficult for this witness to travel from India to New York. Since the witness had appeared in New York and testified before the grand jury in October, 1953, the District Attorney sought to bring the case on for trial on October 22, 1953, just a few days after the arraignment. However, the defendant personally and sought an adjournment for the purpose of making motions addressed to the indictment and for the purpose of preparing this case, which is a lengthy and complicated one involving many counts.

Accordingly, on November 9, 10, 12 and 17, 1953, it was sought to take a conditional examination of the People's witness from India in order to perpetuate his testimony. It soon developed, however, that this was a cumbersome and difficult process, and the proceeding was discontinued by consent on November 17th, and the witness returned to India.

On November 13, 1953, the defendant moved for a bill of particulars in Part I of this court, and the motion was granted in part and denied in part on December 1, 1953, with the result that the bill of particulars was filed by the District Attorney on December 10, 1953. On April 20, 1954, after extensive preparation and study of the case, the defense moved for inspection of the grand jury minutes in Part I of this court, and, on May 1, 1954, this motion was denied.

On January 7, 1955, the District Attorney moved this case for trial in Part IX of this court with the explanation

that he was not then ready, but expected to be ready on April 18, 1955, when his witness from India was expected to be in New York.

On April 18, 1955, the District Attorney stated to the Court that he was not ready to proceed because his witness had not appeared from India.

On September 13, 1955, the case was on the calendar in Part II of General Sessions for the purpose of fixing a trial date, but was adjourned to November 1, 1955. On that date the District Attorney stated that he was not ready to proceed because his witness was not here. It was explained to the court that both sides would be ready when such witness appeared.

On April 11, 1956, defendant moved in Part I of this court to reduce the bail of the defendant, inasmuch as he had been under indictment for a period of more than two years, had continuously resided in this city, was ready to proceed to trial, and was waiting for the District Attorney to produce the necessary witness. Since the District Attorney was not then ready, the bail was reduced to $1,500. The District Attorney stated in court at that time that he expected to have his witness in New York in October and would be ready to proceed to trial at that time.

In October, 1956, deponent communicated with the District Attorney's office and learned from Mr. Kidder, the Assistant District Attorney in charge of this case, that he is not now ready to proceed because his witness is not in New York, and he is in receipt of a communication from his witness to the effect that he does not expect to be in New York until April, 1957.

Deponent respectfully submits that defendant has been ready for trial for some months, and that, since he is laboring under the charge of a serious crime, he is being immeasurably harmed in the conduct of his business and in the making of his livelihood. Defendant is an engineer

and professional man and he is anxious to bring this trial on as soon as possible so that he may clear his name before a jury.

Accordingly, it is respectfully prayed that this Court make an order either dismissing the indictment for lack of prosecution or putting it on the calendar for immediate trial with the proviso that, unless an immediate trial is granted, the indictment be dismissed.

Deponent points out to this Court that he has a Constitutional right to a speedy trial and, although prior adjournments were with the defendant's request or his consent, he has been ready for trial for at least a year and has asked for a trial and is presently asking for a trial, and further delay will irreparably deprive him of his Constitutional rights both under the Federal and State Constitutions.

Wherefore, it is respectfully prayed that this Court make an order dismissing the indictment for lack of prosecution, or, in the alternative, fixing an immediate trial date with the proviso that the indictment be dismissed unless it be brought on for immediate trial.

Dated: New York, N. Y., October 8, 1956.

Harris B. Steinberg

Sworn to before me this
8th day of October, 1956.

Arnold Meier
Notary Public, State of New York
No. 24-2650000
Qualified in Kings County
Commission Expires March 30, 1957

APPENDIX C

Opinion of Edward J. McCullen, J. Denying Motion to Dismiss Indictment

COURT OF GENERAL SESSIONS

County of New York

Indictment No. 3115—1953

The People of the State of New York,

against

Louis Von Cseh,

Defendant.

In this motion on notice to the District Attorney of the County of New York for an order dismissing the indictment for want of prosecution pursuant to Section 668 of the Code of Criminal Procedure, I can well understand the reason the defendant makes such an application.

The indictment was found by the Grand Jury of the County of New York on October 15, 1953, and the defendant was arraigned on October 19, 1953, pleaded not guilty and was admitted to bail in the sum of $15,000. The District Attorney endeavored to bring the case on for trial on October 22, 1953, just a few days after the arraignment, but the defendant protested and successfully sought an adjournment for the purpose of making motions and for preparation of the case which is a lengthy and complicated

one involving many counts. On November 9, 10, 12 and 17 of 1953, it was sought to take a conditional examination of the People's witness from India in order to perpetuate his testimony. It developed, however, that this was a cumbersome and difficult process and the proceeding was discontinued by consent on November 17 and the witness returned to India. On November 13, 1953, the defendant moved for a bill of particulars, which motion was granted in part and denied in part. The bill was filed by the District Attorney on December 10, 1953. On April 20, 1954 the defense moved for an inspection of the Grand Jury minutes and on May 1, 1954 this motion was denied. On January 7, 1955, the District Attorney moved this case for trial in Part IX of the Court of General Sessions with the explanation that he was not then ready but expected to be ready on April 18, 1955 when his witness from India was expected to be in New York. On April 18, 1955, the District Attorney stated to the then Court that he was not ready to proceed because his witness had not appeared from India. On September 13, 1955, the case was on the calendar in Part II of General Sessions for the purpose of fixing a trial date, but was adjourned to November 1, 1955. On that date the District Attorney is alleged to have stated that he was not ready to proceed because his witness was not available." It was explained to the Court that both sides would be ready when the witness appeared. On April 11, 1956 the defendant moved to reduce his bail, in as much as he had been under indictment for a period of more than two years, had continuously resided in this City, was ready to proceed to trial, and was waiting for the District Attorney to produce the necessary witness. Since the District Attorney was not then ready, the bail was reduced to $1500. The District Attorney stated in Court at that time that he expected to have his witness in New York in October and would be ready to proceed to trial at that time.

Appendix C

Come October 1956, the District Attorney stated he was not then ready because his witness was not in New York and stated he is in receipt of the communication from that witness to the effect that he does not expect to be in New York until April 1957.

The District Attorney states the indictment by which this defendant is charged with specific crimes is a meritorious one and should proceed to trial. I appreciate the difficulty the District Attorney is having with his witness who is not in this country. However, the rights of the plaintiff must also be protected. This motion is denied with leave to renew on or about April 10, 1957. If the case does not then proceed to trial, the indictment should be dismissed. I make this qualified latter statement for the reason that I will not be a Judge of the Court of General Sessions beyond January 1, 1957 and I believe I have no right to bind any other Judge of this Court in his judicial endeavors.

Edward J. McCullen
J. C. G. S.

November 21, 1956.
Filed
Part I Nov. 21 1956

APPENDIX D

Minutes of Adjournments

COURT OF GENERAL SESSIONS OF THE COUNTY OF NEW YORK, PART ONE

THE PEOPLE

vs.

LOUIS VON CSEH, *defendant.*

Hon. JONAH J. GOLDSTEIN, Judge.

N.Y Oct. 19th 1953.

Appearances:

HARRIS STEINBERG, Esq. for defendant.

JOHN LEIBELL, Esq. A. D. A. for the People.

The Clerk: People against Louis Von Cseh.
(Defendant brought in on a warrant).
Louis Von Cseh, you are indicted charged with the crime of grand larceny in the 1st degree. Do you wish to plead now?

Mr. Steinberg: Your Honor we waive the reading of the indictment and we plead not guilty.

The Clerk: How do you plead, guilty or not guilty?
Defendant: Not guilty.

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Mr. Leibell: Your Honor, I am Mr. John Leibell Assistant D. A. assigned to the Fraud Bureau. The People in this case respectfully recommend that bail be set in the amount of $50,000. There are three reasons for that recommendation. First of all, the indictment charges very serious crimes. The charge is a larceny of 230 and some odd thousand dollars. There are also counts that charge a forgery of a receipt in the amount of $185,250.

Now, the second reason, your Honor, is that as far as I know this defendant has no real roots in this community that would prevent him from leaving the jurisdiction. He resided in India from 1946 to 1949 and only came to New York in connection with business trips.

Now, the third and the last reason and one that I feel has a distinct bearing on the bail that should be set in this case is information that came to me just recently. I have been informed that one of the witnesses for the people who is here from India was walking on Madison Avenue last Thursday afternoon when he was approached by the defendant who said if you poke your nose into this litigation I'll see that you don't leave New York alive.

Now, it's for those three reasons, your Honor, that the People recommend here that bail be set in the amount of $50,000.

Mr. Steinberg: May I be heard, Your Honor?

The Court: Yes.

Mr. Steinberg: If your Honor please, I appear for the defendant, and, frankly Mr. Leibell's statement seems to me preposterous. His statement that this man has no roots here is false. This man has never been entangled with the criminal law before.

The Court: Is he married or single?

Mr. Steinberg: He is married.

The Court: Where does his wife live?

Mr. Steinberg: He lives at 1158 5th Avenue with his wife. He owns an apartment there. They live there for the last four years. He is an American citizen. He is an engineer, and he carries on business here.

The Court: Are there any children?

Mr. Steinberg: He has no children, your Honor. As I understand the purpose of bail is to insure a man's being in court when he is wanted, and it is not to punish him or to make a Roman holiday of his case. Now, the facts in this case are that the charges alleged in the indictment go back more than five years. The District Attorney is bestirring himself a little belatedly. Furthermore, your Honor, in 1950 this man brought a lawsuit against the complainants in India for $350,000 which lawsuit remains undecided. A year and a half ago, your Honor, the complainant brought a civil action against this defendant here in New York Supreme Court and a counterclaim of $350,000 has been interposed. That lawsuit has been going through preliminary stages and will be tried here in the Supreme Court. Frankly, it is an amazing thing to me that the District Attorney who for many years has followed a policy of not interfering in civil litigation and in letting his office be used to pull someone's chestnuts out of the fire for him, has seen fit to indict at this time on the eve of the civil trial.

I don't see how a man can be expected to get a fair trial from a jury when he has been plastered all over the newspapers as a man under an indictment. Now, if your Honor pleases, about two weeks ago when I heard this case was being presented to the grand jury I called Mr. Leibell and I said I understand you are going to present a case to the grand jury, and when and if you should decide to bring an indictment and there is a warrant for him let me know and I will be glad to bring him in. I

wasn't told that there was an indictment but a policeman presented himself at the defendant's home at a time his wife was in and he was out and being told there was a warrant I promptly produced him. That was a Friday when I told the district attorney's office that he is available any time they want him. There was no stricture of his escaping over the weekend, and I made an appointment at 9:30 this morning to bring him in, and at 9:30 this morning he walked in. We are prepared to offer bail here your Honor. This is a case that has been pending for more than five years, and the district attorney has been investigating it for about two years.

The man has been here, and there is absolutely no reason to punish him by raising bail and making him enrich a bondsman when the only purpose of bail is to have him in court when he is wanted, and he will be here, and everything that has happened to date shows he will be here.

Now I want to address myself to that hearsay statement of the supposed threat. I wasn't there and Mr. Leibell wasn't there but my client assures me that that did not happen. That's all I can offer your Honor in all candor. However, only as recently as this month I personally was approached by emissaries of the complainant with an offer to settle this case civilly and they would drop the criminal case. I refused that offer, your Honor. There are tribunals to determine issues of guilt and issues of fact. This has been pending in the Supreme Court for a long time and it will be determined there although it is made considerably more difficult by the interposition of this indictment at this time, but I respectfully say to your Honor that to impose any bail in any such amount would be an abuse of discretion, and I know your Honor will not do that.

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The Court: Did this defendant appear voluntarily or was he brought in under the warrant?

Mr. Leibell: Your Honor, I sent a detective to the defendant's apartment early Friday morning, and the detective got there about 7 o'clock and the defendant was not there at that time, but his wife was, and then Mr. Steinberg.

The Court: Did the detective identify himself?

Mr. Leibell: The detective is here in court, Detective Fitzpatrick.

The Court: Let him come up.

Mr. Leibell: He was unable to execute the warrant at that time, but later the defendant surrendered.

The Court: When you went to the defendant's home what did you tell his wife?

Detective: I asked to see Mr. Von Cseh and she said he was out.

The Court: Did you say who you were?

Detective: Yes, sir.

The Court: What did you tell her?

Detective: I told her I would like to see Mr. Von Cseh and it was very important that he contact me.

The Court: Did you leave your name?

Detective: Yes, sir, I did.

The Court: Did you tell her you were a detective?

Detective: Yes, sir.

The Court: And you told her where the defendant could contact you?

Detective: That's correct, sir.

The Court: The precinct?

Detective: Yes, sir.

Mr. Steinberg: May I supplement that. I don't think I made it clear to your Honor but after that morning conversation I spoke to the detective, and this was in

my office and it wasn't until I got there with the Felony Court proceeding that I called Mr. Kidder, Mr. Leibell's superior, and arranged to have him brought in, and Mr. Kidder said it was late Friday and we won't be able to get a Jundge for fixing bail, why don't you bring him in on Monday—and, I did bring him in on Monday.

The Court: What bail does the defendant offer?

Mr. Steinberg: Your Honor, if this were not a case where they are spinning a romance I would say parole him in my custody, but in view of the fact that we are hearing a scenario all over again, and I wasn't privileged to be present at the press conference, I say $5,000 is sufficient.

The Court: Will both counsel step up. (Conference). On consent, bail $15,000.

Mr. Steinberg: Will your Honor be good enough to parole him in my custody until the bond is re-written. I have a boindsman here, Mr. Topper, who is ready to write the bond.

Mr. Kidder: I feel the defendant should remain in custody until the bond is posted.

The Court: All right. ($15,000).

E. Morris.
Official Stenographer.

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COURT OF GENERAL SESSIONS OF THE COUNTY OF NEW YORK

PART FIVE

Case No. 3115—1953

THE PEOPLE OF THE STATE OF NEW YORK,

against

LOUIS VON CSEH

N. Y. City, October 23rd, 1953

Indictment for Grand Larceny in the first degree; forgery in the second degree; indictment filed October 15th, 1953; Case No. 3115—1953

Present:

Hon. JOHN A. MULLEN, J.

Appearances:

Jerome Kidder, Esq., A. D. A.
John J. Leibell, Esq., A. D. A.
For the People;

Harris B. Steinberg, Esq.,
For the defendant.

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The case is duly called on the Trial calendar and counsel answer on both sides.

The Court: Good morning. Hello, Mr. Steinberg, how are you?

Mr. Kidder: The People are ready, Your Honor please. It is a matter of when we will reach the trial.

Mr. Steinberg: It is not as easy as that; saying "the People are ready." As Your Honor knows, this case—

The Court: I know nothing about it.

Mr. Steinberg: I am sorry. I thought perhaps you did.

The Court: This is the first time I hear of it.

Mr. Steinberg: This is the result of a very lengthy investigation by the District Attorney's office—I think I am correct—two years or more.

There is a thirty one count indictment against this man, which is for larceny, going back for a period of beyond the statute of limitations and forgery counts.

The man was arraigned on the indictment by the District Attorney only Monday of this week.

The Court: Yes.

[Mr. Steinberg:] And this case involves very tortuous and complicated corporate transactions, most of which stem from transactions in India. Many of the witnesses here are from India.

The Court: India?

Mr. Kidder: Two of the people are from India. They are here. That is one of the reasons why the people are pressing for as early as possible on the trial.

Mr. Steinberg: One thing at a time. I think Mr. Kidder mentioned the fact that he is anxious to try the case because the witnesses are from India. I presume that if he could get his witnesses here from India, as now appears, he can get them again if a man's liberty is at stake.

The Court: What is the nature of the theft?

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Mr. Steinberg: The alleged theft in the indictment is over $230,000.

The Court: What is the nature of it?

Mr. Kidder: There was a transaction here where the Indian Government was getting heavy machinery and electrical equipment. This defendant and others were engaged to supervise in handling these transactions.

The Court: Engaged by whom?

Mr. Kidder: By an Indian Corporation known as Man Radio & Electricals Ltd. I don't know exactly the title. But they, in turn, were acting in behalf of the Jaipur Government that purchased it.

Letters of credit in the amount of about one [million] dollars were set up here for these procedures.

This defendant and others managed, by over-invoicing the material, to build up a very substantial amount on the letters of credit, over the purchase price in the amount of about $250,000.

This defendant induced this corporation which was handling part of the transaction, to put these moneys in his hands, theoretically to be held for the order of the corporation.

Instead of that, he appropriated to his own use about two hundred thousand dollars of that money.

When he was asked to account for it by one of the directors of the corporation, he produced what purported to be a receipt of a man by the name of Col. Maharaj Prithi Singh of Baria, acknowledging receipt of about one hundred and eighty thousand dollars of the money.

I believe that the People will be able to establish that that receipt is a forgery.

The Court: That is enough.

Mr. Steinberg: If the witnesses are here—and I interrupt—they can do either one of two things. They either can wait until we have had adequate time to prepare and

bring them back, or if that is out of the question, inconvenience, expenses, etc., there is the stenographic procedure, which is available to him to perpetuate the testimony. I would be glad to perpetuate the testimony.

The Court: How much time do you want?

Mr. Steinberg: Let me say this your Honor.

The Court: Yes.

Mr. Steinberg: To-morrow I will be in a Part before Mr. Justice Irving Levy, Part 15 of the Supreme Court. I am picking a jury at 10 a. m. on Monday. It is anticipated by the parties to that case that it will occupy the remainder of next week. Then I have several other matters pending.

I want to get to trial of this, too and I think it is more important, once that other case is over.

Then here there is the question of making motions. Normally you have ten days to two weeks. This indictment, on the face, calls for the making of motions.

Then we have the other side of the picture of Mr. Pollock representing this man in civil suits which are pending and have been pending for a long time involving the same subject matter.

The Court: Mr. Pollock? He is to be present at the trial of this case?

Mr. Steinberg: Yes.

The Court: You are not engaged in any long trials that are going to tie you up?

Mr. Pollock: I hope by that time I will be available. I do not expect to be tied up. I have several matters which are pressing. One of those cases has been placed on the calendar in September with a preference for a January trial. There is examination before trial and I expect to be tied up between now and New Years Day on that.

Mr. Steinberg: I think before we go to trial, which I would be happy to do before Your Honor or some other Judge of this Court, we will have to issue depositions to take a deposition in India. We have to question several witnesses. We will be glad to sit down and tell Mr. Kidder exactly what we hope to prove by these witnesses, who they are and everything else.

We could have them come here, too, voluntarily, but we do not have the facilities of the District Attorney's office perhaps and for us it is more difficult.

The Court: It does not look like a case that is going to an early trial.

Mr. Kidder: I might say, as far as defense counsel being familiar with the subject matter of this indictment, Mr. Harris Steinberg, the civil action with which this gentleman is directly concerned, they have been working on that for about a year and a half.

Mr. Steinberg: Not a year.

The Court: How soon—

Mr. Kidder: They have been aware of the criminal procedure then at least several months. When we went to the apartment with the search warrant, that was several months ago.

Mr. Steinberg: More than that.

Mr. Kidder: Actually the delay in the indictment, in getting the indictment was a matter of getting the people here from India, because we had to have them.

Mr. Steinberg: May I interrupt just one moment? If it were the fact that the delay in obtaining the indictment here was due to the delay in getting people from India, I am sure we will have at least that much time to get people from India.

Mr. Kidder: As far as people from India goes, I think it comes within your rights to make a motion to the Court to take a deposition.

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The Court: I haven't any doubt that they will need depositions from India.

Mr. Kidder: I honestly do not see the reason for it at all. And until I am told who the witness is and what he is supposed to testify.

Mr. Steinberg: I leave that to Mr. Pollock, who, as I say frankly, is more familiar with it than I, because it has not been necessary for me to go into the matter. Mr. Pollock is willing to tell you what we have in mind.

The Court: I do not care what you have in mind. You tell me that you need a deposition and Mr. Pollock. That is good enough for me.

Mr. Steinberg: Your Honor I say that with all good faith as an officer of the Court.

Mr. Kidder: In view of the defendant's statement about witnesses, as far as he is concerned, this is going to take a couple of years to get rid of.

The Court: It may be something like that. How soon can you get your depositions that you require?

Mr. Steinberg: Here is the thing. I expect to by the end of this month to be through with my case.

The Court: I am talking to you Mr. Pollock.

Mr. Steinberg; There is only one other thing I do want to mention, to try to give some indication as to time; as to when I will be available for anything.

I have, December 18th, I have reservations to take my wife and children on a fifteen day cruise. There are the tickets which we bought in February of this year. I would not want to interfere with that. I would not want to interfere with that. Other than that, Your Honor, I will start in November working on this case, November first. As fast as I can bring it to a speedy trial, I do not see how anything can be done until after the first of the year.

The Court: How long will it be?.

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Mr. Kidder: I would imagine Your Honor, that the People's case will take about a week.

Mr. Steinberg: I will say, after conferring with Mr. Pollock, who is an experienced lawyer, that this case will take a minimum of six weeks to try.

The Court: Well—

Mr. Kidder: Well I will tell you what Your Honor.

The Court: Then if you go over until that date, Mr. Steinberg, then it is going to be mixed up with that civil case of Mr. Pollock.

Mr. Steinberg: I will say this: that I will undertake and I think Mr. Pollock will, that when this case should be ready, if Mr. Pollock is actually engaged in any trial, it is my primary responsibility. I was retained and Mr. Pollock is to assist *me*. But I will not come to this Court and say that Mr. Pollock is tied up in a lengthy civil case.

Mr. Pollock: If I may add a word. I must confess that I am utterly unprepared in this case, but for reasons beyond my control.

When I got into the matter there was already some inquiry by the District Attorney's office, but the complainant people decided for themselves and made the identical claim in the Supreme Court, New York County, last December, with the summons and complaint for the identical amount of money and so on.

Immediately they started the civil proceeding, I endeavored—it is a complicated corporate accounting question. It is not the simple thing that appears in the indictment.

I am sure the lawyers for the State have chosen what they think could be tried; but the substance, the meat of it is more than that.

Accordingly, when the case was started, I endeavored by cabling to India, to endeavor to get at the corporate books, records, papers and facts, because there are mutual accounts back and forth on each side.

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I discovered that my cables were being routed back to the attorney for the complainant in this case, a gentleman by the name of Kresing. I was told that I could not have any information from India.

I made a motion in the State Court for examination of either of the principals, one of whom is now in India. Judge Hecht granted that examination. To this day I have not been able to get it. I was confronted at that time, trying to get the books and records, with the story that these people are here. When they come into the jurisdiction for the purpose of trial, thirty days before the trial Mr. Pollock is to have every opportunity of inspection.

I discovered that Mr. Steinberg has been working on the criminal side; and I have been busy on the other end. I discovered that one of these people was in New York. Immediately I discovered that, after he had been here two weeks, I applied to Judge Hecht for an immediate examination of that man because that examination of that individual who is here will just open this thing up and show where the books are, the corporate records and books of account to make a thorough study and analysis of this thing, so as to be able to put the pieces together in the ultimate end of a fair and just disposition so that all of these facts come out on the table. That is all.

Mr. Kresing, the lawyer who appears for the complainant individually communicated to Judge Hecht and said this: "Do not let us examine this man even though he is here in the jurisdiction, because he is here in connection with a criminal case; I have talked to the Assistant District Attorney; they tell me they are going to move for an immediate trial. This is just a trick of Mr. Pollock to get this man's testimony."

Confessedly I am trying to get the man's testimony, because how can you talk about corporate transactions which are had at a distance of 10,000 or 15,000 miles about

books and papers and records that are not here, until you get somebody?

On the basis of that statement, we have been prevented from any examination until five days after this trial.

The Court: You are hooked.

Mr. Pollock: On the representation that the District Attorney needs this man.

I asked Mr. Leibell this morning to make sure, so that Mr. Steinberg would appreciate the same thing I do,—Mr. Leibell's frank attitude. There has been a very conciliatory attitude, strictly in accordance with the best interests of the public, I must say.

I asked him this morning—I said "Well now, where are the books, the records? Have you any objection to my beginning this inquiry, so that actually I may be able to establish the whole truth, because the People do not want to be taken over by a complaining witness who gives part of the story about complicated corporate transactions"

I must say, Your Honor, that on the limited knowledge that I have now—on the basis of the investigation there are grave implications here which involve this man who, on the strength of whose testimony this indictment was procured. There are grave implications that he is at the bottom of a scheme, a fantastic scheme, only one that could be conjured up out of India perhaps.

And consequently, here I am in a position, where I should be prepared after these eight or ten months having the case, having been frustrated by the complainant and his lawyer when I tried to go into it; and having been frustrated to-day a second time on the theory that the People need this man, therefore I should not examine him.

The Court: You may examine any witness.

Mr. Pollock: Now says Judge Hecht—Mr. Kresing in his motion called this to his attention and the Judge did the obvious thing, but he did not know what was going on

in the back ground. He said "All right, he will be examined, five days after the criminal case is over."

Now in a situation like this I do not know what the philosophy is; but it seems to me that where complaint is made and particularly do I feel, here is a lawyer in New York on a contingent basis—I am reliably informed fifty percent contingent fee, and then after he ran around to the District Attorney's office he starts a civil suit and then tries to suspend the inquiry to make grave charges involving large sums of money and dramatic accusations, and then stops me from completing an examination, I respectfully suggest that it would be in the interests of justice that the civil case be tried first—for in the criminal case if the man has committed a crime, it will come out there; all interests will be safeguarded and the mutual accounts will be adjusted right then and there.

There is no statute of limitations question involved any more because there is the indictment. But as I say—.

The Court: Well, we cannot fix upon any particular date very soon, yet you must go to work on your case.

Mr. Pollock: But I am trying to explain.

The Court: You have a perfect right to see this man. There is no compulsion on him to talk to you. He is not under the order of Judge Hecht. We do not issue orders in this Court that any witness must not talk to anybody. There is no such thing as a witness who belongs simply to the District Attorney. He is available to anybody.

Mr. Steinberg: One other suggestion. Perhaps this will help Mr. Kidder in his problem of this witness being here at expense and trouble.

Let us sit and take this man's deposition. If he is going to be here at the time of trial we do not need it. I know there is matter in that examination that will show Mr. Kidder that he is a crook.

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The Court: Why wouldn't it be a good idea to examine this fellow and have the District Attorney present at the time?

Mr. Kidder: I oppose any preliminary examination of my witness. The Government has not the right to examine their witnesses.

The Court: They have a right in a civil action.

Mr. Kidder: I do not see the civil action as a cause to examine the People's witness, any more than I would have the right, if the defendant had a witness, to call him in before the Grand Jury.

The Court: I do not say it is done in the case of anything else, but there is a double transaction. It is with respect to the same subject matter.

Mr. Steinberg: We are at a disadvantage over this. While Your Honor sees two transactions which clash, we get it on each end because of the clash and because Mr. Kresing, who is collaborating with Mr. Kidder says he does not want this man examined in the civil Court and leans on that to get us frustrated over there.

The Court: Does the District Attorney aid in keeping the man from being examined by legal action?

Mr. Kidder: We would oppose.

The Court: Did they take a position?

Mr. Kidder: We did not appear before Judge Hecht but we did request Mr. Kresing to state that we were ready to go to trial and did not like the examination before trial to deter us.

Mr. Pollock: We got an order to examine in April.

Mr. Kidder: He was not here.

Mr. Steinberg: Because you did not bring him here, but when he got there it is all right for you and Mr. Kresing to tell the Judge—

Mr. Kidder: I might say to the Court: ordinarily when a witnesss makes himself available to the State

voluntarily—when he is outside of the jurisdiction of the People and makes himself available to the People voluntarily, that his voluntary appearance in this State, ordinarily, as I understand the law, exempts him from service of process or anything else.

The Court: That is only Judge Hecht's opinion.

Mr. Kidder: I think it is designed to protect a witness who comes here to aid the People. I don't think his coming here to aid the People—

The Court: I do not think that applies to a voluntary appearance. I think it applies—

Mr. Kidder: It does.

The Court: It applies to compulsory appearance.

Mr. Steinberg: I have so much confidence in Mr. Kidder's mental fairness that I want to say, I will be glad to show Mr. Kidder a couple of telegrams, if he wants, that we have, which should convince him that there is never a doubt that Mather [*sic*] his witness is a crook.

Mr. Kidder: If you were to tell me—I will say this: when I go to trial with this case, the chances are that I will tell the Jury, that Mathur is as big a crook probably as your man.

Mr. Steinberg: On that statement, if he acknowledges that Mathur is a crook, Mathur is his principal witness on whom the case depends, shouldn't we have a chance to examine that man before trial?

The Court: It will be for the Jury to determine that.

Mr. Steinberg: The thing is this: to help to get at the truth in the trial. You don't know what the truth is. You weren't there; neither was I; but if he acknowledges that Mathur his principal witness is a crook, if we have a chance to examine him, we can then get other, impartial witnesses to produce evidence on the main charge in issue.

The Court: Even if he proves a crook, he may be proven other things that he does not know at the present time.

Mr. Steinberg: I do not say he is a crook.

Mr. Kidder: My. Mathur's participation in them, they will go into.

Mr. Pollock: We have not got the corporate books and records. They are in New York. They are needed for this trial.

The Court: Trial procedure, documents that the defense may need, something which should be gotten by deposition maybe as soon as possible.

Mr. Kidder: He can move to take a deposition at the earliest possible date. The Court will then pass upon whether those witnesses are necessary.

The Court: Why don't you do that?

Mr. Steinberg: All right.

The Court: It looks to me like—

Mr. Steinberg: I think that is a fair suggestion.

The Court: That is vitally necessary here. If we can come to an agreement—Mr. Pollock has a case in the Federal Court. So that should not be a reason for a delay.

Mr. Steinberg: Right.

Mr. Kidder: Mr. Leibell was wondering whether we were going to fix a date for trial.

The Court: Just to keep on top of it. Not with any definiteness in a situation like this. I can see that they have to have a chance.

Mr. Steinberg: Do you want to go on the first week in January?

Mr. Kidder: I would suggest a maximum of ten days so that we can make a commission.

Mr. Steinberg: I am actually engaged in the meanwhile.

The Court: You will be on trial all next week.

Mr. Steinberg: Yes.

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The Court: That will take you up to the 30th. Then we have Election Day. We do have the 11th, a holiday. And we have—let us say by the 13th of November, that is the end of that. That gives you—

Mr. Steinberg: Make motions addressed to the indictment.

The Court: And the motions addressed to the indictment.

Mr. Kidder: Make all motions with respect to depositions.

Mr. Steinberg: I cannot undertake that for this reason I have to give you. I have to soak up an awful lot and study to know who is to testify to what. I will go to work on that as soon as I get through the trial. If I can make it by the 13th, I will make it that one day. If I cannot I will give you a ring and let you know what or when, as soon as possible.

The Court: Try to do it.

Mr. Kidder: You will do the best you can.

The Court: In good faith. That is all you can do.

Mr. Steinberg: I will.

The Court: You cannot do other than that.

Mr. Kidder: It would seem that after these seven months—

Mr. Steinberg: I did not see your indictment until Monday.

Mr. Kidder: There was never any mystery about what this fellow was going to be indicted for.

Mr. Steinberg: It was a great mystery to me.

The Court: There is no chance of disposing of the case?

Mr. Steinberg: No. Not unless they D. O. R.

Mr. Kidder: This man approached our witness at some set date and told him that he was going to stall for two years. I might as well tell it.

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Mr. Steinberg: This is something—Mr. Kidder was not present. I was present at one meeting and I tell you of my own knowledge as an officer of the Court that Mathur approached me with a proposition if a certain amount of money were paid he would disappear.

The Court: That is with respect to Mathur. However, please impress on your client, the defendant, that if it is established as a fact that witnesses are attempted to be put out of circulation, concerning a trial, then we might put extra pressure on you gentlemen to work fast. We don't want anything like that.

I don't know anything about it. I am passing no judgment.

Mr. Steinberg: Your Honor I suggest November 13th for that purpose.

The Court: The 13th to get the motions addressed to the indictment. And try to go as far as you can with the motion with respect to the commission. At least you might well find it possible to get together with Mr. Pollock and dictate the bases for your application for the depositions, so that it will be based upon the importance of those proposed witnesses in the trial. Could you do that?

Mr. Steinberg: I will try to co-operate with Mr. Kidder in that, because he undoubtedly will have to get their names, because he will have questions in cross.

Mr. Kidder: I think we ought to get a copy.

Mr. Steinberg: We will probably have to do that. Somebody has got to take the deposition.

Mr. Kidder: We ought to see who the witnesses are: what they are expected to testify to. It may be that the Court will not find it relevant. Maybe I can even stipulate. I do not know.

Mr. Steinberg: We will get to that as quickly as we can.

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The Court: Oh that get together and Mr. Pollock can proceed. Because unless you get tied up in some other matter then you are the chief person that has to be consulted on some of these matters which will delay the trial, to the extent—

Mr. Kidder: I think that there is hope that the longer it is delayed the better chance it has.

The Court: I never saw a defendant to lose by delay. I am well aware of that.

I know that you are dealing with lawyers for whom I have the highest respect and whom I know are very often engaged in long trials. That is all. You have legal excuses. You just cannot overlook that. Now there seems to be a little bit of a lull here.

Mr. Steinberg: What about a month from now for the reporting date? Let us not put it off too long.

The Court: No. The 13th.

Mr. Steinberg: You want a brief on that date?

The Court: On the 13th. Do the best you can. Work hard. That is all.

Mr. Steinberg: November 13th in Part Six, Your Honor, having spoken about it now and gotten the background—

The Court: I do not know that the case is going to be before me.

Mr. Steinberg: I mean for the next adjourned date for the purpose just for reporting, so that we can then see what the status is, in order to keep on top of it and eventually fix the date.

The Court: Well I do not want to direct the entire order of procedure here. The District Attorney controls the calendar and puts it wherever he wants to. I do not want to deprive him of going before some other Judge, if he sees fit to try the case there, or make any further motions.

Mr. Kidder: As far as I am concerned, it is fine. If Your Honor wants it before you, it is perfectly all right.

The Court: It does not make any difference to me.

Mr. Kidder: I am not trying to stick you with a long case.

The Court: Whatever is on my calendar I dispose of to the best of my ability. I won't take anything off or put anything on.

Mr. Steinberg: Which will it be, the 13th?

The Court: November the 13th. Leave it in the Part wherever it is. If and when it is in a particular Part before me, the District Attorney has control of that. I do not want to do something that controls him on his calendar arrangements.

Mr. Steinberg: Thank you Your Honor.

Patrick J. Begley
Official Stenographer.

Appendix D

COURT OF GENERAL SESSIONS

COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

against

LOUIS VON CSEH.

Part V—November 13, 1953

Before:

Hon. ABRAHAM N. GELLER, Justice

Indictment Number 3115—53

Indictment filed October 15, 1953

For the People: Asst. D.A. J. Kidder

For the Defendant: H. Steinberg, Esq.

EUGENE A. SATTLER, C.S.R.
Additional Court Stenographer

Appendix D

The Clerk: People vs Louis Von Cseh.

Mr. Kidder: On this matter, Your Honor, we are at present perpetuating the testimony of our Indian witnesses before Judge Streit. It's been a very slow and painful process up to this point. It looks like it will take a few weeks to have it—

As Your Honor knows, I have that Japanese case that will be coming up. So I would suggest adjourning this for about two weeks until we all see where we stand at that time.

The Court: The 27th of November.

Mr. Kidder: Will there be Court on that date. As far as I'm concerned on that day—

The Court: What is the idea. Let's put it down for a different date. The 30th.

Mr. Steinberg: Bail continued?

Mr. Kidder: No objection.

The Court: November 30th. Bail continued.

I Do Hereby Certify that the foregoing is a true and accurate representation of the stenographic notes taken on the calendar call of Part V on Friday, November 13, 1953 before Hon. Abraham N. Geller.

Dated, New York, January 18, 1961

Eugene A. Sattler, C. S. R.
Additional Court Stenographer

Appendix D

COURT OF GENERAL SESSIONS

COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

against

LOUIS VON OSEH.

Part V—November 30, 1953

Before:

Hon. ABRAHAM N. GELLER, Justice

Indictment Number 3115—53

Indictment filed October 15, 1953

For the People: Asst. D. A, S. Leibell

For the Defendant: H. Steinberg, Es

EUGENE A. SATTLER, C. S. R.
Additional Court Stenographer

Appendix D

The Clerk: People vs. Louis Von Cseh. Mr. Steinberg.

Mr. Leibell: Your Honor, in this case the People request that it be marked off the calendar at this time. Two of the witnesses for the People have returned to India in view of the fact that an early trial was out of the question.

We hope to have it restored to the calendar so that it can be tried sometime in March or April.

Mr. Steinberg: No objection, Your Honor.

The Court: This is the matter I had the motion in Part I.

Marked off the calendar by consent.

Mr. Steinberg: Will Your Honor continue bail?

Mr. Leibell: No objection, Your Honor.

The Court: Bail continued.

I Do Hereby Certify that the foregoing is a true and accurate representation of the stenographic notes taken on the calendar call of Part V on Monday, November 30, 1953 before Hon. Abraham N. Geller.

Dated, New York, January 18, 1961

Eugene A. Sattler, C. S. R.
Additional Court Stenographer

Appendix D

COURT OF GENERAL SESSIONS OF THE COUNTY OF NEW YORK—PART 3

THE PEOPLE

against

LOUIS VON CSEH.

New York, April 18th, 1955.

Before:

Hon. JONAH J. GOLDSTEIN, J.

Indicted for grand larceny.

Appearances:

For the People: Assistant District Attorney Carl Vergari, Esq.

For the Defendant: No appearances.

(The defendant was not arraigned.)

The Clerk: People against Von Czeh [*sic*].
Mr. Vergari: Will you mark this off calendar.
The Court: Off calendar.

Reginald C. Mershon,
Official Stenographer.

Appendix D

COURT OF GENERAL SESSIONS OF THE COUNTY OF NEW YORK, PART TWO.

THE PEOPLE OF THE STATE OF NEW YORK,

vs.

LOUIS VON SCEH [*sic*], defendant.

Before:

HON. JACOB GOULD SCHUEMAN, Judge

N Y Sept. 13th 1955.

Appearances:

JEROME KIDDER, Esq. A.D.A. For the People.

HARRY STEINBERG, Esq. for the defendant.

The Clerk: People against Louis Von Czeh [*sic*].

Mr. Kidder: Your Honor, in this matter I put this case on the calendar primarily for the purpose of fixing a date for trial. The People would have to bring at least two witnesses here from India. I understand they will be able to come towards the latter part of October.

The Court: What part of India?

Mr. Steinberg: Jaipur.

Mr. Kidder: Yes; Jaipur.

The Court: That's the northern part.

Mr. Kidder: Yes. We tried to perpetuate their testimony but with language difficulties and other complications we never succeeded in completing that, so we will have to bring them back, and if possible we would [like] to set it down sometime toward the middle of October.

The Court: What are the occupations of the witnesses? It is suggested the middle of October.

Mr. Steinberg: I spoke to Mr. Kidder yesterday, and I realize there is a process that must go through, that the case must go through to get to actual trial. It has been a number of years since indictment and I have no objection to October 15th if it is understood we get a further adjournment at that time, but I have several cases, three cases in The Court of Appeals on October 20th and 21st and two of those are assigned murder cases, and they will take a great deal of my time.

The Court: The defendant is on bail.

Mr. Steinberg: Yes. One other factor, this year I accepted a job as Chairman of the Jewish Federation dinner, the Lawyers Committee, and it will be a dinner which will be in the middle of November. Again, I don't urge that everything else be set aside for my convenience but I will be in very bad shape about preparing a long difficult case. This case should take more than a month to try, two months to try.

The Court: Why the delay, a 1953 indictment?

Mr. Kidder: With the case of witnesses over in India it is not too easy to get them here. We wanted to try it immediately and made every effort to do so, but at that time counsel had a lot of perfectly legitimate excuses they presented, so I kept these witnesses around here quite a while hoping to get to trial, and then we tried to perpetuate the testimony, as I said, but that didn't work out, and, there are various government regulations and one thing and another prevented their return.

The Court: Are they Indians or Pakistinians?

Mr. Kidder: I don't know the real answer to that.

The Court: It is important.

Mr. Steinberg: They are Indians.

Mr. Kidder: I believe they are Indians.

Mr. Steinberg: Would your Honor put it down for around November 1st sometime, and I will try to go to trial with Mr. Kidder as soon as possible.

Mr. Kidder: I would like to put it down for a date that we are most agreed to try it.

Mr. Steinberg: I would like to try it.

Mr. Kidder: Does the new term start November 7?

Mr. Steinberg: Yes, November 7th.

Mr. Kidder: Then there is Election Day.

Mr. Steinberg: I am going to Mexico on December 19th, and we will have to get it tried. May we put it down for November 7th?

The Court: What date do you want?

Mr. Steinberg: November 7th and I will try to be ready to go to trial then.

The Court: That is just before Election Day.

Mr. Kidder: In the meantime I suppose I will have to find out exactly what Part I can try it in.

The Court: Why not make it November 14th?

(Conference had at the bench).

Mr. Steinberg: We can make it November 1st if you want to.

Mr. Kidder: That would be fine.

Mr. Steinberg: Make it November 1st.

The Court: November 1st for trial.

Mr. Steinberg: Thank you your Honor.

Mr. Kidder: Thank you.

E. Morris,
Official Stenographer.

Appendix D

COURT OF GENERAL SESSIONS

County of New York—Part V

Ind. No. 3115—53

The People

v

Louis Von Czeh [*sic*].

New York, N. Y., February 4, 1957

Before:

Hon. George M. Carney, J.

The defendant was indicted for the crime of grand larceny.

Appearances:

For the people:
J. Yeargin, Esq., and Jerome Kidder, Esq.
Assistant District Attorney

For the defendant:
H. Steinberg, Esq.

The Clerk of the Court: Louis Von Czeh [*sic*], on bail, Mr. Steinberg.

(Whereupon, there was a conference at the bench, off the record and out of the hearing of the defendant, between the Court and counsel for both sides, after which the following proceedings took place on the record in open court:

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The Court: What is the application?

Mr. Steinberg: If your Honor please, I would like to note, on behalf of the defendant Von C'zeh [*sic*] that he is ready for trial, that he has previously made a motion to dismiss for lack of prosecution or, in the alternative, for a speedy trial.

I noted a violation of his constitutional rights at that time.

I understand Mr. Kidder's difficulty. He has been anxious to go to trial, too, but his witnesses haven't been here.

But from the defendant's point of view, I have to note that.

Mr. Kidder: I just want to say, your Honor, when the defendant was first indicted the People were ready to go to trial. The witnesses were here and it was at the defendant's opposition [*sic*] that adjournments were granted until they finally had to go back to India.

A motion was made to dismiss this case because of the failure of the People to proceed, and Judge McCullen, after hearing arguments, denied that motion, said that if we did not dispose of it by April of this year, he might then consider dismissing it.

I think, in view of the fact that the defendant was the reason why we couldn't get to trial in the first place, that any objection does not come with very good grace.

The Court: Where are your witnesses now—still in India?

Mr. Kidder: In India yes.

The Court: Are you expecting them back?

Mr. Kidder: Yes, your Honor, they told me they could get back here the first week in March. And I suggested March 11th, so I can have them here a few days ahead of time and know exactly where we stand on March 11th.

The Court: I will adjourn it to March 11th, at the People's request.

IRWIN S. SHAW
Official Stenographer

Appendix D

COURT OF GENERAL SESSIONS OF THE
COUNTY OF NEW YORK—PART FIVE

Indictment No. 3115—53

THE PEOPLE

against

LOUIS VON CSEH.

Before:

Hon. GERALD P. CULKIN, J.

ADJOURNMENT

New York, March 11th, 1957.

Indicted for Grand Larceny in the First Degree, etc.

Indictment filed October 10, 1953.

Appearances:

For the People:
Maurice Nadjari, Esq.,
Assistant District Attorney.

For the Defendant:
Harris Steinberg, Esq.

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The Clerk: Trial Calendar. Louis Von Cseh. Mr. Steinberg.

(The defendant was arraigned at the bar.)

Mr. Steinberg: For the defendant.

Mr. Nadjari: If your Honor please, this case is to be tried by Mr. Kidder, who is presently on trial before Judge Carney and has been for the past month. And he is unable to determine when this trial will terminate, if your Honor please. He still has a good number of witnesses to go. In addition, I am familiar with some of the difficulties that this case—

The Court: All right. What date do you suggest?

Mr. Steinberg: It isn't as simple as that, with all due respect, your Honor. This case has been on since 1953. It has been put on repeatedly on the District Attorney's assertion that there are witnesses in India whom he needs. I have made a motion to dismiss for lack of prosecution, because the defendant is ready to go to trial and his Constitutional rights have been violated.

The Court: We'll mark the case ready and passed, subject to Mr. Kidder's availability.

Mr. Steinberg: May we have a statement—are these witnesses going to be here, so we know we'll get ready?

Mr. Nadjari: There are letters which are now in the file, which have been received by the District Attorney's Office indicating that one of the witnesses, who is a necessary party in this case, has been ill, and that he definitely intends to come to this City for the purpose of this trial as soon as he is recovered. There is also a letter from his physician, indicating the accuracy of his statement.

We believe that if this—We do believe this witness will be available in May, the beginning of May, and hope we can get an adjournment until that time.

Mr. Steinberg: I respectfully protest, sir, to any such adjournment. I say this man's Constitutional rights have already been violated, and they will be further violated. To my mind, this goes contrary to the decision of Judge McCullen, which I will be glad to hand up to your Honor. I would like you to look at it, and also the minutes of the last session. (Handing papers to the Court, who peruses same.)

Your Honor will note from the minutes that at the last time this case was on the calendar it was stated by Mr. Kidder that at this time, today, he would have a definite statement that we would be marked a definite date for trial or the case would be dismissed otherwise.

The Court: All right, counsellor, he indicated he would be ready on March 11th. Now there is an intervening factor, that one of the witnesses is ill.

Mr. Steinberg: With all due respect, we have heard this sort of thing from this witness, with no supporting statement: just rumors: a man writes a letter from India—

Mr. Nadjari: There is a physician's letter attached to this communication by the witness.

The Court: It is indicated, in the first minutes here, counsel, that the People stated that they were ready originally.

Mr. Steinberg: That was when the indictment was filed, and they wanted to go to trial two days after the indictment was filed, in a fifty-count indictment. I said I would be ready to take depositions from this man.

The Court: There are equities on both sides.

We'll put it over until May.

Mr. Steinberg: May I respectfully note my objection to that.—

The Court: Yes.

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Mr. Steinberg: —and the fact that we claim the defendant's Constitutional rights are violated by this untoward and unduly lengthy adjournment!

The Court: All right, counsel.

May 7th.

Notify Mr. Kidder that the case is set for May 7th, and he better make some arrangements with the witnesses to come here from India.

Mr. Nadjari: Yes, sir. The office is in constant communication with these people. We are carrying on quite a correspondence.

The Court: All right.

I'm sorry, counsellor, you're inconvenienced.

Mr. Steinberg: Bail continued?

The Court: Bail continued.

William Roven,
Official Stenographer.